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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Single Bench

M.C.C. NO. 183 OF 2005

APPLICANT : State Bar Council of Chhattisgarh through its Secretary, High Court Campus, Bilaspur (CG).

P.R. No. 2259 dt. 25/7/05
Presented by Shri Agrawal
dated 25/7/05

Versus

NON-APPLICANT : Ku. Ashalata Soni, B.A.L.L.B., aged about 35 years, D/o Shri K. R. Soni, Resident of Baloda-Bazar Distt. Raipur (CG)

REVIEW PETITION FOR REVIEW ORDER DATED 26.07.05 PASSED IN W.P. NO. 859/2001

A.F.O
15/09/06

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

M.C.C. No.183 of 2005

State Bar Council of Chhattisgarh

- Versus -

Ku. Ashalata Soni

POST FOR ORDER ON 15th SEPTEMBER, 2006

Sd/-
L.C.BHADOO
Judge

(32)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

M.C.C. No.183 of 2005

State Bar Council of Chhattisgarh

- Versus -

Ku. Ashalata Soni

Present: -

Shri Manindra Shrivastava, Sr. Advocate with Shri S.R.J. Jaiswal, Advocate: For the applicant.

Shri R.M. Solapurkar, Advocate: For the non-applicant.

ORDER

(Passed on 15th September, 2006)

L.C. BHADOO, J.

1. By this MCC, the applicant has sought review of order dated 26-7-2005 passed by this Court in the Writ Petition No.859/2001 filed by the non-applicant herein.

2. Brief facts necessary for disposal of this petition are that the non-applicant herein passed her L.L.B. 3 years degree course from the Government D.K. College, Baloda Bazar. After passing of the examination, the non-applicant herein had applied in the office of the applicant herein for enrolment as an Advocate to practice law, but the applicant herein instead of enrolling the non-applicant sent letters dated 6-10-98 and 20-1-2000 whereby the non-applicant's application for enrolment as an Advocate to practice law was rejected on the ground that she has not passed degree course as a regular candidate. The said letters were questioned by the non-applicant in the above-mentioned writ petition before this Court. The undisputed facts mentioned in the writ petition were that the non-applicant could not get admission in the first year L.L.B. course. However, she was allowed to attend the classes of first year L.L.B. course and at the end of

session, she appeared in the said examination and passed first year L.L.B. examination. Thereafter, she was given admission as a regular student in the 2nd and 3rd year of L.L.B. Course and ultimately, she passed 3 years degree course and was awarded a degree. In the said degree, it was not mentioned that the non-applicant herein passed L.L.B. 3 years degree course as a non-collegiate student or private student. Along with the petition, the non-applicant had also attached a certificate dated 2-6-99 of the Principal, Government D.K. College, Baloda Bazar, in which the Principal gave a certificate that the non-applicant passed first year L.L.B. examination by attending regular classes and based on that, this Court while interpreting clause of Section 24 of the Advocates Act, 1961, read with Rule 1 (1) (c) (Section-B) of the Bar Council of India Rules allowed the petition treating that the non-applicant has fulfilled all the conditions laid down in Section 24 of the Advocates Act, 1961 read with Rule 1 (1) (c) (Section-B) of the Bar Council of India Rules. Now, the Bar Council of Chhattisgarh has sought review of the said order on the ground that the Principal vide his letter dated 30th July 2005, Annexures-A/1 and A/2, has written to the Bar Council that in the year 1994-95 the non-applicant was not allowed to attend regular classes, as there was nothing on record which shows that she attended classes regularly.

3. The relevant provisions of the Code of Civil Procedure in respect of review of the judgment or order passed by the Court are contained in Section 114 and Order 47 Rule 1 of the C.P.C., 1908. Section 114 of the C.P.C. envisages as follows:-

114. Review – Subject as aforesaid, any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

The provisions of Order 47 of the C.P.C. envisages as follows:-

1. Application for review of judgment. – (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[*Explanation*.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

Therefore, the above provisions of Section 114 of the C.P.C. empowers a Court to review its order if the conditions precedents laid down therein are satisfied and that does not prescribe any condition on the power of the Court except those which are expressly provided in S.114 of the C.P.C. in terms whereof it is empowered to make such order as it thinks fit. However,

Order 47, R.1 of the Code of Civil Procedure provides for filing an application for review. Such an application for review would be maintainable only (i) upon discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, (ii) on account of some mistake or error apparent on the face of the record, and (iii) for any other sufficient reason. Therefore, condition precedent for entertaining a review is that in the first instance, before filing a review conditions as envisaged in Section 114 read with Order 47 Rule 1 must be satisfied and thereafter the person who seeks review of judgment or order must establish the ground that after passing of the order or judgment, a new and important matter or evidence has been discovered, same he could not discover till the passing of the order, even after exercise of due diligence was not within his knowledge or could not be produced by him or there is mistake or error apparent on the face of the record in the order of which review has been sought or for any other sufficient reason.

4. In numbers of cases, the above provisions of the C.P.C. came up before the Hon'ble Apex Court for their interpretation and one such matter is **Board of Control for Cricket, India and another V. Netaji Cricket Club and others** reported in **2005 AIR SCW 230** in which while interpreting the above provisions the Hon'ble Apex Court held that:-

> "Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the Court which would include a mistake in the nature of the

undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O.47, R.1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*."

The Apex Court further held that:-

"It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."

The Apex Court also referred a decision in the matter of **Rajesh D. Darbar and others V. Narasingrao Krishnaji Kulkarni & Ors** reported in **(2003) 7 SCC 219** in which the Court held that:-

"The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or re-shaped in the light of updated facts."

5. In the matter of **Haridas Das V. Usha Rani Banik (Smt) and others** reported in **(2006) 4 Supreme Court Cases 78** the Court held that:-

> "Section 114 CPC does not even adumbrate the ambit of interference expected of the court. The parameters are prescribed in Order 47 CPC which permit a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. That is amply evident from the Explanation to Order 47 Rule 1."

In the matter of **Thungabhadra Industries Ltd. V. Govt. of A.P.** reported in **AIR 1964 SC 1372** the Apex Court observed that:-

> "[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal is disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.....where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

In the matter of **Meera Bhanja V. Nirmala Kumari Choudhury** reported in **AIR 1995 SC 455** the Apex Court held that:-

"It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in **Aribam Tuleshwar Sharma V. Aribam Pishak Sharma (AIR 1979 SC 1047)** speaking through Chinnappa Reddy, J. has made the following pertinent observations:-

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.'"

6. In the light of the above principle settled by the Apex Court, if we examine the facts of the present case which are narrated in the earlier part of this order, I am of the considered view that the applicant has not been able to make out a case for review of the order dated 26-7-2005 as per the

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provisions of Order 47 Rule 1 of the C.P.C. because when the order, of which review has been sought, was passed, the non-applicant filed a certificate of the Principal of same college which was issued in the year 1999 in which the Principal has categorically mentioned that the non-applicant herein appeared in the first year of LLB examination as a Private Student, but she was allowed to attend regular classes and in fact, she had attended regular classes. Now, the certificates Annexures-A/1 & A/2 dated 30th July 2005 have been obtained after passing of the said order. It is not a case that when the non-applicant was studying in the first year L.L.B. Course, the Principal who has issued certificate dated 30-7-2005 was the Principal at that time. It appears that based on the attendance register of the students this certificate has been issued. It is but natural that when the non-applicant was not a regular student, how her attendance could be marked in the attendance register of the regular students. It is not a case that the earlier certificate issued on 2-6-99 by the then Principal was forged one. In that certificate, it has clearly been mentioned that the non-applicant was a private student. However, she was allowed to attend the classes regularly, therefore, that certificate still hold field. Therefore, even after the certificates Annexures-A/1 & A/2 there is no change in the facts. In fact, the applicant wants to re-agitate the same point which has already been decided after due consideration and deliberation.

7. The other point which is necessary for seeking review of the order is that the party seeking review was not in a position even after exercise of due diligence to produce certificate or was not within his knowledge. Nothing has been mentioned in the review petition about the condition prescribed in the Order 47 Rule 1 of the C.P.C. that the applicant was not within the knowledge even after exercise of due diligence and could have produced the certificate, therefore, this condition has not been satisfied. Moreover, by

passing the impugned order this Court has not committed any error apparent on the face of the record because same was passed after considering the fact that the non-applicant was allowed to appear in the said course, in fact, she had attended the classes regularly even though she was private student and also considering the relevant provisions of Section 24 of the Advocates Act read with Rule 1 (1) (c) (Section-B) of the Bar Council of India Rules. If the point raised by the applicant is now entertained that amounts to rehearing of the case and points of law which have already been decided by this Court after hearing and giving sufficient opportunity to learned counsel for the applicant.

8. In the result, the petition is devoid of merit, same is liable to be dismissed and it is hereby dismissed *in limine*. However, there shall be no order as to costs.

Sd/-
L.C.BHADOO
Judge

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